Supreme Court, U.S.
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No. 93-1832

IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

DR. BETTYE R. LANGLEY,
Petitioner
v.
JACKSON STATE UNIVERSITY and DR. JAMES A. HEFNER
In His Official Capacity,
Respondents

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

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RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

The question presented is whether the Fifth Circuit's decision is consistent with the precedent set by this Court in *Kokkonen v. Guardian Life Ins. Co. of America*, —— U.S. ——, 114 S.Ct. 1673 (1994).

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RESPONDENTS' BRIEF IN OPPOSITION

INTRODUCTION

Respondents, Jackson State University and Dr. James Lyons,[1] respectfully request that this Court deny the petition for writ of certiorari seeking review of the opinion of the United States Court of Appeals for the Fifth Circuit. That opinion (App. 1-13) is reported at 14 F.3d 1070 (5th Cir. 1994). The Fifth Circuit held that a federal district court lacked jurisdiction to enforce a settlement agreement after dismissal of the action, with prejudice, where the agreement was neither approved by

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[1] Dr. James Lyons is the present President of Jackson State University and has been substituted for Dr. James A. Hefner.

the Court nor incorporated in the dismissal order, and where the Court did not retain jurisdiction, absent some independent jurisdictional basis.

STATEMENT OF THE CASE

Petitioner, Dr. Bettye R. Langley, initially filed suit in March, 1986, in federal district court in Mississippi, alleging discrimination on the basis of race and retaliation for complaining of unlawful discrimination and filing previous Equal Employment Opportunity Commission (EEOC) charges. The District Court enjoined Respondents to permit petitioner to conduct a workshop without interference already scheduled for later in March. (App. at 23).

In September 1987, the parties reached a settlement agreement which was executed on September 4, 1987. (App. 121-127). The District Court signed a Stipulation and Order of Dismissal dismissing the action with prejudice on September 4, 1987. (App. 18). Respondents agree with Petitioner that the District Court did not retain jurisdiction to enforce the settlement agreement, nor did not incorporate the settlement into the Stipulation and Order of Dismissal.

In 1989, Petitioner filed another EEOC charge of discrimination alleging that Respondents were retaliating against her because of her previous EEOC charges and litigation, were violating the terms of her previous settlement agreement and subjecting her to a hostile work environment. On January 19, 1990, Petitioner then filed a second action charging Respondents with violations of Title VI and VII of the Civil Rights Act, 42 U.S.C. § 2000d and 2000e, respectively, and of the Fourteenth Amendment to the United States Constitution. Respondents answered this complaint on February 14, 1990. On February 27, 1990, Petitioner filed a motion to Enforce the Settlement Agreement in the first lawsuit. Thereafter, on March 2, 1990, Petitioner filed

a Motion to Consolidate the second lawsuit with the first lawsuit. Over Respondents' objection, the District Court entered an Order of Consolidation reopening the first lawsuit "for the purposes of adjudicating [Petitioner's] Verified Motion to Enforce Settlement Agreement." (App. at 21).

The District Court found from the evidence presented that the relationship between Petitioner and Respondents was marked by conflict and strife, that Petitioner perceived herself to be a victim of discrimination and retaliation and constantly on guard against any conduct she believed sustained her perception and that Respondents perceived that they had become a victim as a result of Petitioner's threats of legal action every time she was asked to do something. The District Court concluded that Petitioner failed to sustain her burden of persuasion to demonstrate that any treatment she had received was the result of retaliation and/or discrimination or that she had been subjected to a hostile racial environment that would entitle her to relief. (App. at 112). However, the Court did rule that Respondents had violated the terms of the 1987 settlement agreement by failing to grant Petitioner the twenty-five percent reduction in teaching load set forth in the settlement agreement for her work as continuing education coordinator, and granted Petitioner a $23,429.38 judgment for this work. (App. 112 and 114).

Respondents' request for reconsideration of the ruling that Respondents violated the 1987 Settlement Agreement was denied by Order dated June 9, 1992. (App. 114). In this Order, the District Court explained that Petitioner "specifically raised the issue of whether she had been paid for teaching an overload. . ." (App. 115) as a basis of her damage award in her second complaint alleging violations of Title VI, Title VII, and the Fourteenth Amendment. *Id.*

The Fifth Circuit vacated the District Court's determination that Respondents breached the Settlement Agreement because of the lack of subject matter jurisdiction over the settlement agreement. The Fifth Circuit ruled that Petitioner's Motion to Enforce the Settlement Agreement after dismissal of the action, with prejudice, was outside the Court's inherent power to enforce settlement agreements because the settlement agreement was neither approved of nor incorporated in the dismissal order, and the Court did not retain jurisdiction, absent federal jurisdiction independent of the action settled. *Dr. Bettye R. Langley v. Jackson State University, et al.*, 14 F.3d 1070 (5th Cir. 1994). The Fifth Circuit dismissed Dr. Langley's suit to enforce the agreement. However, it affirmed the District Court's findings that Dr. Langley failed to prove discrimination based upon her race or retaliation.

Dr. Langley is teaching at Respondent, Jackson State University, which comes under the management and control of the Board of Trustees of State Institutions of Higher Learning (IHL). Respondent is one of the eight senior state universities governed by IHL, the state agency responsible for supervising and controlling the State of Mississippi's public university system. Respondent is one of the three historically black institutions alleged as victims of racial discrimiation by plaintiffs in *U.S. v. Fordice*, 112 S.Ct. 2727 (1992).

REASONS FOR DENYING THE WRIT

I. THE FIFTH CIRCUIT'S DECISION TO DISMISS THE SUIT TO ENFORCE THE SETTLEMENT AGREEMENT IS CONSISTENT WITH THE RECENT DECISION IN *KOKKONEN v. GUARDIAN LIFE INS. CO OF AMERICA*, —— U.S. ——, 114 S.Ct. 1673 (1994).

In a unanimous decision, this Court in *Kokkonen v. Guardian Life Ins. Co. of America*, —— U.S. ——, 114 S.Ct. 1673 (1994), held that a federal district court lacks jurisdiction to enforce a settlement agreement where the court does not retain jurisdiction and does not incorporate the terms of the settlement into its decree, unless there is some independent basis for federal jurisdiction.

The procedural posture of the case *sub judice* is identical to that in *Kokkonen*. In *Kokkonen*, the parties entered a settlement agreement and, pursuant to Rule 41 of the Federal Rules of Civil Procedure, executed a Stipulation and Order of Dismissal With Prejudice, which did not retain the court's jurisdiction nor refer to or incorporate the settlement agreement. There was no independent basis for federal jurisdiction. In the case *sub judice*, the parties entered a settlement agreement and later, pursuant to Rule 41 of the Federal Rules of Civil Procedure, executed a Stipulation and Order of Dismissal dismissing the action with prejudice. As conceded by Petitioner, the Court did not retain jurisdiction and did not incorporate or refer to the terms of the settlement in the Stipulation and Order of Dismissal (Pet. 3). There was no independent basis for federal jurisdiction. The Fifth Circuit's decision to dismiss Petitioner's suit to enforce the settlement agreement for lack of jurisdiction is consistent with this Court's recent decision in *Kokkonen, supra*.

Accordingly, this case presents no occasion for the exercise of certiorari jurisdiction by the Court.

II. THERE IS NO SPLIT AMONG THE CIRCUITS AS TO WHETHER THE FEDERAL COURTS HAVE JURISDICTION TO ENFORCE SETTLEMENT AGREEMENTS THAT ARE NEITHER APPROVED BY THE COURTS NOR INCORPORATED INTO A JUDICIAL DECREE ABSENT SOME INDEPENDENT JURISDICTIONAL BASIS.

Any split that may have existed among the circuits as to whether a federal district court had jurisdiction to enforce the terms of a settlement agreement that was neither approved by the court nor incorporated into the dismissal order was definitively resolved by this Court in *Kokkonen v. Guardian Life Insurance Company of America, supra.* Prior to this Court's decision in *Kokkonen*, the Sixth and Ninth Circuits had held that federal district courts had subject matter jurisdiction to entertain a post-dismissal action to enforce settlement agreements based upon the district courts' inherent power to protect their proceedings and indicate their authority. *Aro Corp. v. Allied Witan Co.*, 531 F.2d 1368, 1371 (6th Cir. 1976), *Kokkonen, supra.* On the other hand, the Fourth, Fifth and Seventh Circuits had espoused the view that once a court dismisses an action with prejudice based upon a settlement agreement and that agreement is not approved by the court, incorporated into a decree or order and there is no retention of jurisdiction, any action to enforce the settlement agreement must be premised upon an independent basis of jurisdiction. *Fairfax Countrywide Citizens v. Fairfax County*, 571 F.2d 1299 (4th Cir. 1978), *cert. denied*, 439 U.S. 1047, 99 S.Ct. 722, 58 L.Ed.2d 706 (1978); *Langley v. Jackson State University, supra; McCall-Bey Franzen*, 777 F.2d 1178 (7th Cir. 1985).

Kokkonen, supra, foreclosed Petitioner's argument by holding that a federal district court lacks jurisdiction over a claim for breach of contract where part of the consideration was dismissal of an earlier federal suit. Where the parties desire the court to maintain jurisdic-

tion to enforce a settlement agreement, they may do so by making the agreement a part of the court's order or having the court to retain jurisdiction for the purpose of enforcing the agreement. In the case *sub judice,* the parties chose not to invoke the court's jurisdiction to enforce the settlement agreement by not incorporating the agreement into the order of dismissal.

All of the cases cited by Petitioner, with the exception of *Durrett v. Housing Authority of the City of Providence,* 896 F.2d 600 (1st Cir. 1990), a housing discrimination case, which Petitioner mistakenly characterizes as a Title VII action, involved the enforcement of Title VII pre-determination settlements and conciliation agreements in actions brought by the EEOC. The lower courts have held that although Title VII does not explicitly give the EEOC the authority to seek enforcement of conciliation agreements in federal court, it would frustrate congressional intent to deny the EEOC a forum in which to enforce such agreements. See *EEOC v. Safeway Stores, Inc.,* 714 F.2d 567, 2572 (5th Cir. 1983), *cert. denied,* 467 U.S. 1204, 104 S.Ct. 2384, 81 L.Ed.2d 343 (1984).

As this Court poignantly noted in *Kokkonen v. Guardian Life Insurance Company of America, supra,* "Federal courts are courts of limited jurisdiction. They possess only that power authorized by Constitution and statute which is not to be expanded by judicial decree." *Id.* at 1675 (citations omitted). Therefore, petitioner's invitation to substantially expand the jurisdiction of the federal courts to enforce settlement agreements neither approved by the courts or incorporated into decrees or orders of dismissal must be rejected.

III. THE CASE SUB JUDICE DOES NOT PRESENT THE QUESTION OF WHETHER TITLE VII SETTLEMENTS SHOULD BE INTERPRETED UNDER FEDERAL OR STATE LAW.

The argument that Title VII settlements should be interpreted under federal rather than state law has no application in the *instant* case. Whether the federal courts interpret Title VII settlement agreements under state or federal law presupposes that the courts have jurisdiction to interpret such agreements. Since the Fifth Circuit found the district court lacked jurisdiction over the settlement agreement, it is inconsequential whether state or federal law should have been used to interpret the settlement agreement. Moreover, the Fifth Circuit's holding in *Langley, supra*, that the District Court lacked subject matter jurisdiction over the settlement agreement was vindicated by this Court's holding in *Kokkonen, supra*. Although Petitioner did not have the benefit of the *Kokkonen* decision when she filed her Petition herein, the argument that federal rather than state law should be used to interpret Title VII settlement agreements has clearly been foreclosed by lack of jurisdiction. Nevertheless, Respondents are constrained to distinguish the authorities relied upon by Petitioner.

In *Dhaliwal v. Woods Division, Hesston Corporation*, 930 F.2d 547 (7th Cir. 1991), involved a Title VII plaintiff who entered into a verbal agreement to settle the lawsuit, but attempted to renege on the entire agreement when it was reduced to writing because it contained a provision not included in the verbal agreement. Upon defendant's request, the district court ordered the parties to comply with all the terms of the settlement agreement except the provision not included in the verbal agreement. In dictum, the Seventh Circuit noted:

> We have treated the issue as one of general contractual interpretation because the parties have done so. We reiterate earlier expressed doubts that Title

> VII settlement agreements are in fact covered by general law—federal common law—rather than by state contract law.

Id. at 548 (citations omitted). *Dhaliwal* did not hold that a Title VII settlement agreement was a state law contract. Clearly, the court had jurisdiction because the disagreement over the settlement agreement arose while the case was still pending before the district court.

Fulgence v. J. Ray McDermott, 662 F.2d 1207 (5th Cir. 1981), likewise involved the enforcement of a verbal agreement to settle a pending Title VII action after plaintiff refused to sign the written agreement which he had earlier verbally approved. The district court ruled that plaintiff was bound by the terms of the verbal agreement and the Fifth Circuit affirmed. Again, the dispute arose while the case was still pending in the district court; therefore, there was never a jurisdictional issue.

Eatmon v. Bristol Steel & Iron Works, Inc., 769 F.2d 1503 (11th Cir. 1985), was a Title VII action based upon the breach of an executive order conciliation agreement entered into between the employer and the EEOC. The Court held that the aggrieved employees, for whom the conciliation agreement was made, could sue under Title VII for breach of the agreement for the same reasons that the EEOC could bring such suits.

The question before the Court in *Seredinski v. Clifton Precision Products Co.*, 776 F.2d 56 (3rd Cir. 1985), was whether a suit seeking to rescind a Title VII and Age Discrimination in Employment Act (ADEA) settlement agreement because of fraudulent inducement arose under federal law. Thus, the plaintiff was attempting to void the settlement agreement and reinstate her original Title VII and ADEA actions rather than enforcing the agreement. The Court held that the attempt to revive the original Title VII and ADEA discrimination charge by alleging fraud in the procurement of the settlement arose

under federal law. *Id.* at 60. By contrast, Petitioner herein was not attempting to void the settlement agreement nor was she alleging that breach of the agreement constituted unlawful discrimination in violation of Title VII. Petitioner's argument is that the District Court had jurisdiction because the case which the agreement settled arose under Title VII and the District Court retained jurisdiction to enforce the settlement agreement. See *Langley v. JSU, supra,* fn. 2, App. 4, note 2.

The authorities relied upon by Petitioner do not demonstrate that the Court of Appeals' decision is in conflict with any decision of this Court or that there is a split among the circuits on any issue presented by the *instant* case.

IV. THE DISTRICT COURT DID NOT HAVE SUPPLEMENTAL JURISDICTION OVER THE SETTLEMENT AGREEMENT.

Petitioner incorrectly alleges that neither the District Court nor the Court of Appeals addressed the applicability of supplemental jurisdiction. Pet. at 10. The Court of Appeals addressed this issue in footnote 5 of its opinion.

> The consolidation of Dr. Langley's two separate actions did not confer subject matter jurisdiction over the action to enforce the settlement agreement. Where two actions have been consolidated, we must examine "each consolidated case separately to determine the jurisdictional premise upon which each stands."

Langley v. JSU, supra, at 1072 (citations omitted), App. 5, fn. 5. The facts underlying Petitioner's claim for violation of settlement agreement had nothing to do with the facts underlying her Title VII claims. The settlement agreement was entered into in 1987 to resolve a lawsuit filed in 1986, whereas the Title VII action was filed in 1990 based upon alleged occurrences since the settlement

agreement was reached. App. 18-19, 20-21, 23-24. This Court also addressed the issue of supplemental jurisdiction in *Kokkonen, supra.*

> No case of ours asserts, nor do we think the concept of limited federal jurisdiction permits us to assert, ancillary jurisdiction over any agreement that has as part of its consideration the dismissal of a case before a federal court.

Id. at 1676.

V. THIS CASE SHOULD NOT BE REMANDED FOR CONSIDERATION OF TITLE VI, IN ACCORDANCE WITH THIS COURT'S REVERSAL AND REMAND OF *U.S. v. FORDICE,* —— U.S. ——, 112 S.Ct. 2727 (1992).

The remand of *U.S. v. Fordice,* —— U.S. ——, 112 S.Ct. 2727 (1992) does not provide a basis to remand the case *sub judice.*

U.S. v. Fordice, supra, is a class action suit which alleged that state officials had failed to satisfy their obligations under the Equal Protection Clause of the Fourteenth Amendment, and Title VI to dismantle the State of Mississippi's dual system of higher education. The Respondent, Jackson State University, is one of the three historically black institutions alleged to be victims of this dual system. This Court remanded *U.S. v. Fordice, supra,* in light of the State of Mississippi's affirmative duty under Title VI to dismantle its prior dual university system. *U.S. v. Fordice,* —— U.S. ——, 112 S.Ct. at 2737, n. 7. There is no such affirmative duty in this case.

Furthermore, the District Court made "a thorough and careful consideration of the evidence presented" and found no discrimination pursuant to Petitioner's "Titles VI and VII" . . . and "Fourteenth Amendment" . . . claims. (App. 24).

CONCLUSION

The petition filed herein fails to demonstrate that the decision of the Court of Appeals conflicts with any precedent of this Court or with the decision of any other court of appeals. Any conflict that previously existed among the circuit on the jurisdiction of federal courts to enforce settlement agreements not incorporated into the court decrees was resolved by this Court's recent decision in *Kokkonen, supra.*

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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